

REMARKS

Claims 1-5 and 7-10, 12-20 and 23-24 are pending in the application. Claims 6, 11, 21 and 22 are canceled. Claims 1, 10, 12-14, 16, 18, 20, 23 and 24 are amended. Support for the amendment to claim 1 is found at least at page 4, 5th paragraph and page 5, 3rd paragraph. Claim 18 is amended to depend from claim 1. Claims 10, 12-14, 16, 23 and 24 are amended for clarity and to be consistent with the amendments made to claims 1 and 18. Applicants respectfully submit that the amendment does not add new matter.

Examiner Interview

An Examiner was held between Examiner Tischler and the undersigned on December 10, 2010. The rejections of record were discussed, in particular the patentability of the features recited in dependent claims 21 and 22. Applicants have amended claim 1 to recite the features previously recited in claims 21 and 22. Applicants wish to thank the Examiner for her time and attention devoted to this matter.

Claim Rejections

Rejections using U.S. Patent No. 4,223,128 alone

Claims 1-5, 7, 10-12, 14-15 and 18 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,223,128 issued to Halek et al. ("Halek"). Claims 8, 9, 13, 21, 23 and 24 were rejected under 35 U.S.C. § 103(a) as being obvious over Halek

Independent claim 1 is amended for clarity and to incorporate elements recited in claims 21 and 22. Independent claim 18 is amended to depend from claim 1. Applicants respectfully submit that the amendments render these rejections of claims 1-5, 7-15, 18, 21, 23 and 24 moot.

Rejections using International Application No. WO03046045 and Halek

Claims 1-5 and 7-24 were rejected under 35 U.S.C. § 103(a) as being obvious over International Application No. WO03046045 (English language equivalent: U.S. Patent No. 7,262,263) to Otto et al. ("Otto") in view of Halek.

Claims 16, 17 and 22 were rejected under 35 U.S.C. § 103(a) as being obvious over Halek in view of Otto.

Independent Claim 1

Amended independent claim 1 is directed to method of producing polyesters having a desired I.V. value comprising a) crystallizing a polyester material in two stages in the presence of a gas with a dew point of less than or equal to -10°C in the two stages, the first stage being carried out at a lower temperature than the subsequent stage, and b) setting the dew point of the gas to a particular value to obtain a desired rise of I.V. value of the polyester of particularly recited values.

Claim 1 was rejected as being obvious over Otto in view of Halek. Claim 1 is amended to recite the elements previously recited in claims 21 and 22.

Applicants respectfully submit that Otto does not teach or suggest that the dew point of the gas is set in dependence of the desired rise of I.V., according to amended claim 1, and indeed, makes no mention of the relationship between setting the dew point of the gas to obtain a desired rise of I.V. The Examiner concedes that Otto is silent in this regard. Office action, page 4, lines 1-2. Nonetheless, the Examiner alleges that “it would have been obvious to one of skill in the art to have varied the dew point of Otto’s gas through routine experimentation to arrive at the desired IV, since Halek teaches that the IV is dependent on the dew point of the gas used during the crystallization of polymers.” Office action, page 4, lines 2-5.

In this regard, Applicants submit herewith a declaration Brigitta Otto, an inventor of both the present application, and the Otto reference (“the Declaration”). In the Declaration, Dr. Otto avers:

“The WO03/046045 application does not teach, and would not have suggested to one of skill in the art, to set the dew point of the gas in two crystallization stages to a particular value according to newly amended claim 1. In the Examples of the ‘045 application, the dew point of the gas in the two stages was not set to a particular value to obtain a desired rise in I.V. of:

- (i) about 0 dl/g to about 0.02 dl/g and the dew point of the gas is set to about -10°C to about -20°C ;
- (ii) about 0.02 dl/g to about 0.04 dl/g and the dew point of the gas is set to about -15°C to about -25°C ;
- (iii) about 0.04 dl/g to about 0.06 dl/g and the dew point of the gas is set to about -20°C to about -40°C ;

(iv) about 0.06 dl/g to about 0.08 dl/g and the dew point of the gas is set to about -30°C to about -55°C; or

(v) about 0.08 dl/g to about 0.1 dl/g and the dew point of the gas is set to about -45°C to about -75°C.

In Example 2, the dew point of the gas used was -75 to -95 °C. In Example 4, the dew point of the gas used was -75 to -95 °C.” Declaration, part 3.

Halek fails to cure the deficiencies of Otto. As noted in the prior response, Halek merely discloses that “[t]he air used in the stabilization step must be very low dew point air . . . generally lower than about -30°C.” Col. 8, lines 48-50 (emphasis added). The dew point of the air used in the first crystallization step is not defined by Halek in any way. See e.g., col. 11, lines 7-12. Halek does not teach or suggest, among other things, to carry out crystallization in the presence of a gas with a dew point of less than or equal to -10 °C in both stages of a two-stage crystallization according to amended claim 1. Accordingly, neither Otto nor Halek teach or suggest to one of skill in the art to set the dewpoint in dependence of the desired rise of I.V., according to amended claim 1.

As previously indicated, in contrast to the combined teachings of Otto and Halek, the present specification teaches a process that uses gas with a dew point of less than or equal to -10°C in both the first and second crystallization stages, i.e., uses the same gas. See specification, page 4, paragraphs 1-2 and page 9, 6th paragraph. In other words, a process set-up in accordance with amended claim 1 permits adjustment of the resulting end-I.V. value *via* the process parameter dew point in both stages. Applicants discovered that such a method is economically favorable, offers high flexibility, and the possibility to use varying amounts of dried gases, i.e., gases with different dew points, with respect to the desired end-I.V. value. See, e.g., specification, page 4, 6th paragraph.

Accordingly, Otto and Halek, taken separately or combined, do not teach or suggest the subject matter of independent claim 1.

Therefore, independent claim 1 is allowable. Withdrawal of the rejections and allowance of claim 1 are respectfully requested.

Claims 2-5, 7-10, 12-20, 23 and 24

Claims 2-5, 7-10, 12-20, 23 and 24 each depend from allowable claim 1, and accordingly are allowable for at least the reasons set forth above. Claims 2-5, 7-10, 12-20, 23 and 24 may also be patentable for additional reasons not discussed herein. Withdrawal of the rejections and allowance of claims 2-5, 7-10, 12-20, 23 and 24 are respectfully requested.

CONCLUSION

In view of the foregoing, allowance of the application is respectfully requested. If a conference call would be useful in resolving issues arising from the filing of this communication, the Examiner is invited to contact the undersigned at the number below.

Respectfully submitted,

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